

Senate File 559 - Introduced

SENATE FILE _____
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1197)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to cemetery and funeral merchandise, funeral
2 services, and cemeteries and providing fees and penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1191SV 82
5 av/gg/14

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1 1 Section 1. Section 523A.102, subsections 6 and 11, Code
1 2 2007, are amended to read as follows:
1 3 6. "Commissioner" means the commissioner of insurance or
1 4 the deputy administrator authorized in section 523A.801 to the
~~1 5 extent the commissioner delegates functions to the deputy~~
~~1 6 administrator commissioner's designee.~~

1 7 11. "Establishment" means each business establishment
1 8 entity that advertises, sells, promotes, or offers cemetery
1 9 merchandise, funeral merchandise, funeral services, or a
1 10 combination thereof prior to the death of the person named or
1 11 implied in a purchase agreement.

1 12 Sec. 2. Section 523A.102, Code 2007, is amended by adding
1 13 the following new subsection:

1 14 NEW SUBSECTION. 26A. "Sales agent" means a person,
1 15 including an employee, who is authorized by an establishment
1 16 or seller to sell cemetery merchandise, funeral merchandise,
1 17 funeral services, or a combination thereof, on behalf of the
1 18 establishment or seller.

1 19 Sec. 3. Section 523A.201, subsection 3, Code 2007, is
1 20 amended to read as follows:

1 21 3. If a purchase agreement for cemetery merchandise,
1 22 funeral merchandise, funeral services, or a combination
1 23 thereof provides that payments are to be made in installments,
1 24 the seller shall deposit eighty percent of each payment in the
1 25 trust fund until the full amount required to be placed in
1 26 trust has been deposited. If the purchase agreement is
1 27 financed with or sold to a financial institution, the purchase
1 28 agreement shall be considered paid in full and the trust
1 29 requirements shall be satisfied within fifteen days after the
1 30 ~~close of the month in which the seller receives funds from the~~
1 31 financial institution.

1 32 Sec. 4. Section 523A.201, subsection 5, Code 2007, is
1 33 amended by striking the subsection and inserting in lieu
1 34 thereof the following:

1 35 5. A seller shall have a fidelity bond or similar
2 1 insurance in an amount of not less than fifty thousand dollars
2 2 to protect against the loss of purchaser payments not placed
2 3 in trust within the time period required by this section and
2 4 section 523A.202. The commissioner may require a greater
2 5 amount as the commissioner determines is necessary. If the
2 6 establishment or seller changes ownership, the fidelity bond
2 7 or similar insurance shall continue in force for at least one
2 8 year after the transfer of ownership.

2 9 Sec. 5. Section 523A.201, subsections 8 and 10, Code 2007,
2 10 are amended to read as follows:

2 11 8. Interest or income earned on amounts deposited in trust
2 12 shall remain in trust under the same terms and conditions as
2 13 payments made under the purchase agreement, ~~except that the~~
~~2 14 seller may withdraw so much of the interest or income as~~
~~2 15 represents the difference between the amount needed to adjust~~
~~2 16 the trust funds for inflation as set by the commissioner based~~
~~2 17 on the consumer price index and the interest or income earned~~
~~2 18 during the preceding year not to exceed fifty percent of the~~

2 19 total interest or income on a calendar-year basis. The early
2 20 ~~withdrawal of interest or income under this provision does not~~
2 21 ~~affect the purchaser's right to a credit of such interest or~~
2 22 ~~income in the event of a nonguaranteed price agreement,~~
2 23 ~~cancellation, or nonperformance by the seller.~~

2 24 10. If a seller voluntarily or involuntarily ceases doing
2 25 business and the seller's obligation to provide merchandise or
2 26 services has not been assumed by another establishment holding
2 27 a current establishment permit, all trust funds, including
2 28 accrued interest or income, shall be repaid to the purchaser
2 29 within ~~one hundred twenty~~ thirty days following the seller's
2 30 ~~cessation of business or, in the event of circumstances where~~
2 31 ~~a payment is not possible within one hundred twenty days, as~~
2 32 ~~soon as is reasonably practicable. A seller may petition the~~
2 33 ~~commissioner, upon a showing of good cause, for a longer~~
2 34 ~~period of time for repayment. A seller shall notify the~~
2 35 ~~commissioner at least thirty days prior to ceasing business.~~

3 1 Sec. 6. Section 523A.202, subsection 2, paragraphs a, b,
3 2 and c, Code 2007, are amended to read as follows:

3 3 a. The payments shall be deposited directly into an
3 4 interest-bearing burial account in the purchaser's name using
3 5 the purchaser's tax identification number.

3 6 b. The purchaser or the seller shall deposit payments
3 7 directly into a separate trust account in the purchaser's name
3 8 using the purchaser's tax identification number. The account
3 9 may be made payable to the seller upon the death of the
3 10 purchaser or the designated beneficiary, provided that, until
3 11 death, the purchaser retains the exclusive power to hold,
3 12 manage, pledge, and invest the trust account funds and may
3 13 revoke the trust and withdraw the funds, in whole or in part,
3 14 at any time during the term of the agreement.

3 15 c. The purchaser or the seller shall deposit payments
3 16 directly into a separate trust account in the name of the
3 17 purchaser using the purchaser's tax identification number, as
3 18 trustee, for the named beneficiary, to be held, invested, and
3 19 administered as a trust account for the benefit and protection
3 20 of the beneficiary. The depositor shall notify the financial
3 21 institution of the existence and terms of the trust, including
3 22 at a minimum, the name of each party to the agreement, the
3 23 name and address of the trustee, and the name and address of
3 24 the beneficiary. The account may be made payable to the
3 25 seller upon the beneficiary's death.

3 26 Sec. 7. Section 523A.202, subsection 4, Code 2007, is
3 27 amended to read as follows:

3 28 4. This section does not prohibit moving trust funds from
3 29 one financial institution to another if the commissioner is
3 30 notified of the change within thirty days of the transfer of
3 31 the trust funds.

3 32 Sec. 8. Section 523A.203, Code 2007, is amended by adding
3 33 the following new subsection:

3 34 NEW SUBSECTION. 7. Unless proceeding under section
3 35 523A.403, investment and management decisions for all trust
4 1 funds shall be made in accordance with the provisions of
4 2 section 633A.4302.

4 3 Sec. 9. Section 523A.204, Code 2007, is amended by
4 4 striking the section and inserting in lieu thereof the
4 5 following:

4 6 523A.204 ESTABLISHMENT ANNUAL REPORTING REQUIREMENTS.

4 7 1. An establishment shall file with the commissioner not
4 8 later than April 1 of each year an annual report on a form
4 9 prescribed by the commissioner.

4 10 2. An establishment filing an annual report shall pay a
4 11 filing fee of ten dollars per purchase agreement sold during
4 12 the year covered by the report. Duplicate fees are not
4 13 required for the same purchase agreement. If a purchase
4 14 agreement has multiple sellers, the fee shall be paid by the
4 15 establishment actually providing the merchandise and services.

4 16 3. Notwithstanding chapter 22, all records maintained by
4 17 the commissioner under this section shall be confidential and
4 18 shall not be made available for inspection or copying except
4 19 upon the approval of the commissioner or the attorney general.

4 20 4. The commissioner shall levy an administrative penalty
4 21 in the amount of five hundred dollars against an establishment
4 22 that fails to file the annual report when due, payable to the
4 23 state for deposit in the general fund.

4 24 5. An establishment that fails to file the annual report
4 25 when due shall immediately cease soliciting or executing
4 26 purchase agreements until the annual report is filed and any
4 27 administrative penalty assessed has been paid.

4 28 Sec. 10. Section 523A.206, Code 2007, is amended by
4 29 striking the section and inserting in lieu thereof the

4 30 following:

4 31 523A.206 EXAMINATIONS == AUTHORITY AND SCOPE.

4 32 1. The commissioner or the commissioner's designee may
4 33 conduct an examination under this chapter of any establishment
4 34 or seller as often as the commissioner deems appropriate. If
4 35 an establishment or seller has a trust arrangement, the
5 1 commissioner shall conduct an examination of such an
5 2 establishment or seller doing business in this state not less
5 3 than once every three years. The commissioner may require an
5 4 audit of an establishment, seller, or other person by a
5 5 certified public accountant to verify compliance with the
5 6 requirements of this chapter, including rules adopted and
5 7 orders issued pursuant to this chapter.

5 8 2. An establishment or a seller shall reimburse the
5 9 division for the expense of conducting the examination unless
5 10 the commissioner waives this requirement. The expense of an
5 11 examination involving multiple sellers or other persons shall
5 12 be prorated among them upon any reasonable basis as determined
5 13 by the commissioner.

5 14 3. For purposes of completing an examination under this
5 15 chapter, the commissioner may examine or investigate any
5 16 person, or the business of any person, if the examination or
5 17 investigation is, in the sole discretion of the commissioner,
5 18 necessary or material to the examination of the establishment
5 19 or seller.

5 20 4. Upon determining that an examination should be
5 21 conducted, the commissioner or the commissioner's designee may
5 22 appoint one or more examiners to perform the examination and
5 23 instruct those examiners as to the scope of the examination.

5 24 5. An establishment, seller, or other person from whom
5 25 information is sought, and its officers, directors, employees,
5 26 and agents shall provide to the examiners appointed under
5 27 subsection 4, timely, convenient, and free access at their
5 28 offices, at all reasonable hours, to all books, records,
5 29 accounts, papers, documents, and all electronic or other
5 30 recordings related to the property, assets, business, and
5 31 affairs of the establishment or seller being examined and
5 32 shall facilitate the examination as much as possible.

5 33 a. The refusal of an establishment or seller, by its
5 34 officers, directors, employees, or agents, to submit to an
5 35 examination or to comply with a reasonable written request of
6 1 an examiner shall constitute grounds for the suspension,
6 2 revocation, or nonrenewal of any permit held by the
6 3 establishment or seller to engage in business subject to the
6 4 commissioner's jurisdiction.

6 5 b. If an establishment or seller declines or refuses to
6 6 submit to an examination as provided in this chapter, the
6 7 commissioner shall immediately suspend, revoke, or nonrenew
6 8 any permit held by the establishment or business to engage in
6 9 business subject to the commissioner's jurisdiction, and shall
6 10 report the commissioner's action to the attorney general, who
6 11 shall immediately apply to the district court for the
6 12 appointment of a receiver to administer the final affairs of
6 13 the establishment or seller.

6 14 6. The commissioner shall not make information obtained in
6 15 the course of an examination public, except when a duty under
6 16 this chapter requires the commissioner to take action against
6 17 an establishment or seller or to cooperate with another law
6 18 enforcement agency, or when the commissioner is called as a
6 19 witness in a civil or criminal proceeding.

6 20 7. This section shall not be construed to limit the
6 21 commissioner's authority to terminate or suspend any
6 22 examination in order to pursue other legal or regulatory
6 23 actions pursuant to this chapter. Findings of fact and
6 24 conclusions made pursuant to an examination are deemed to be
6 25 prima facie evidence in any legal or regulatory action.

6 26 Sec. 11. NEW SECTION. 523A.207 AUDITS BY CERTIFIED
6 27 PUBLIC ACCOUNTANTS.

6 28 A purchase agreement shall not be sold or transferred, as
6 29 part of the sale of a business or the assets of a business,
6 30 until an audit has been performed by a certified public
6 31 accountant and filed with the commissioner that expresses the
6 32 auditor's opinion of the adequacy of funding related to the
6 33 purchase agreements to be sold or transferred.

6 34 Sec. 12. Section 523A.401, subsection 5, paragraphs a and
6 35 b, Code 2007, are amended to read as follows:

7 1 a. Except as necessary and appropriate to satisfy the
7 2 requirements regarding burial trust funds under Title XIX of
7 3 the federal Social Security Act, the policy shall not be owned
7 4 by the establishment or seller, the policy shall not be
7 5 irrevocably assigned to the establishment or seller, and the

7 6 assignment of proceeds from the insurance policy to the
7 7 establishment or seller shall be limited to the
7 8 establishment's interests as they appear in the purchase
7 9 agreement, and conditioned on the establishment's or seller's
7 10 delivery of cemetery merchandise, funeral merchandise, and
7 11 funeral services pursuant to a purchase agreement.

7 12 b. The policy shall provide that any assignment of
7 13 benefits is contingent upon the establishment's or seller's
7 14 delivery of cemetery merchandise, funeral merchandise, and
7 15 funeral services pursuant to a purchase agreement.

7 16 Sec. 13. Section 523A.401, subsection 6, unnumbered
7 17 paragraph 1, Code 2007, is amended to read as follows:

7 18 With the written consent of the purchaser, an existing
7 19 prepaid purchase agreement with trust-funded benefits may be
7 20 converted to a prepaid purchase agreement with
7 21 insurance-funded benefits provided the establishment or seller
7 22 and the insurance benefits comply with the following
7 23 provisions:

7 24 Sec. 14. Section 523A.401, subsection 6, paragraph d, Code
7 25 2007, is amended to read as follows:

7 26 d. The establishment or seller shall maintain a copy of
7 27 any prepaid trust-funded purchase agreement that was converted
7 28 to a prepaid insurance-funded purchase agreement and retain
7 29 the payment history records for each converted purchase
7 30 agreement prior to conversion until the cemetery merchandise,
7 31 funeral merchandise, and funeral services have been delivered.

7 32 Sec. 15. Section 523A.404, subsection 1, paragraphs f and
7 33 h, Code 2007, are amended to read as follows:

7 34 f. Use a method of storage that allows for visual ~~audits~~
7 35 examinations of the merchandise.

8 1 h. File a consent to be audited examined and inspected by
8 2 the commissioner.

8 3 Sec. 16. Section 523A.501, Code 2007, is amended to read
8 4 as follows:

8 5 523A.501 ~~ESTABLISHMENT PRENEED SELLERS == PERMITS.~~

8 6 1. A person shall not advertise, sell, promote, or offer
8 7 to furnish cemetery merchandise, funeral merchandise, funeral
8 8 services, or a combination thereof when performance or
8 9 delivery may be more than one hundred twenty days following
8 10 the initial payment on the account without an establishment
8 11 permit. ~~Each establishment must have an establishment permit.~~

8 12 2. An application for an establishment permit shall be
8 13 filed on a form prescribed by the commissioner, and be
8 14 accompanied by a fifty dollar filing fee, ~~and include a copy~~
~~8 15 of each purchase agreement the person will use for sales of~~
~~8 16 cemetery merchandise, funeral merchandise, funeral services,~~
~~8 17 or a combination thereof.~~

8 18 3. ~~The application shall contain:~~

8 19 a. ~~The name and address of the establishment.~~

8 20 b. ~~The name and address of any additional provider of~~
~~8 21 cemetery merchandise, funeral merchandise, funeral services,~~
~~8 22 or a combination thereof.~~

8 23 c. ~~The name and address of each owner, officer, or other~~
~~8 24 official of the establishment, including when relevant the~~
~~8 25 chief executive officer and the members of the board of~~
~~8 26 directors.~~

8 27 d. ~~A description of any common business enterprise or~~
~~8 28 parent company.~~

8 29 e. ~~The types of cemetery merchandise, funeral merchandise,~~
~~8 30 funeral services, or a combination thereof to be sold.~~

8 31 f. ~~The types of trust or trust alternatives utilized by~~
~~8 32 the establishment and a list of the financial institutions,~~
~~8 33 storage facilities, surety companies, and insurance companies~~
~~8 34 utilized by the establishment on a regular basis.~~

8 35 4. ~~A permit holder shall inform the commissioner of~~
~~9 1 changes in the information required to be provided by~~
~~9 2 subsection 3 within thirty days of the change.~~

9 3 5. ~~3.~~ An establishment permit is not assignable or
9 4 transferable. A permit holder selling all or part of a
9 5 business entity that has an establishment permit shall cancel
9 6 the permit, and the purchaser shall apply for a new permit in
9 7 the purchaser's name within thirty days of the sale.

9 8 6. ~~4.~~ If no denial order is in effect and no proceeding
9 9 is pending under section 523A.503, the application becomes
9 10 effective at noon of the thirtieth day after a completed
9 11 application or an amendment completing the application is
9 12 filed, unless waived by the applicant. The commissioner may
9 13 specify an earlier effective date. Automatic effectiveness
9 14 under this subsection shall not be deemed approval of the
9 15 application. If the commissioner does not grant the permit,
9 16 the commissioner shall notify the person in writing of the

9 17 reasons for the denial.

9 18 7. An initial permit is valid for two years from the date
9 19 the application is filed. A permit may be renewed for two
9 20 years by filing the form prescribed by the commissioner under
9 21 subsection 2, accompanied by a ten dollar renewal fee.
9 22 Submission of purchase agreements is not required for renewals
9 23 unless the purchase agreements have been modified since the
9 24 last filing.

9 25 5. An establishment permit shall remain valid until it is
9 26 denied, suspended, revoked, or surrendered.

9 27 ~~8.~~ 6. The commissioner may by rule create or accept a
9 28 multijurisdiction establishment permit. If the establishment
9 29 permit is issued by another jurisdiction, the rules shall
9 30 require the filing of an application or notice form and
9 31 payment of the applicable filing fee of fifty dollars for an
9 32 initial application and ten dollars for a renewal application.
9 33 The application or notice form utilized and the effective
9 34 dates and terms of the permit may vary from the provisions set
9 35 forth in ~~subsections 2, 3, and 7~~ this section.

10 1 Sec. 17. Section 523A.502, Code 2007, is amended to read
10 2 as follows:

10 3 523A.502 SALES PERMITS AGENTS == LICENSES.

10 4 1. A person shall not advertise, sell, promote, or offer
10 5 to furnish cemetery merchandise, funeral merchandise, funeral
10 6 services, or a combination thereof when performance or
10 7 delivery may be more than one hundred twenty days following
10 8 initial payment on the account ~~without unless the person has a~~
10 9 sales permit. A permit holder must be an employee or license
10 10 and is a sales agent of a person holding an establishment
10 11 permit ~~who can deliver the cemetery merchandise, funeral~~
10 12 ~~merchandise, funeral services, or a combination thereof being~~
10 13 ~~sold. A person must have a sales permit for each~~
10 14 ~~establishment at which the person works. However, a person~~
10 15 ~~may apply for a sales permit covering multiple establishments,~~
10 16 ~~if the establishments have common ownership. The~~
10 17 establishment permit holder is liable for the acts of its
10 18 ~~employees and sales~~ agents performed in advertising, selling,
10 19 promoting, or offering to furnish, upon the future death of a
10 20 person named or implied in a purchase agreement, cemetery
10 21 merchandise, funeral merchandise, funeral services, or a
10 22 combination thereof.

10 23 2. This chapter does not permit a person to practice
10 24 mortuary science without a license. A person holding a
10 25 current sales ~~permit~~ license may advertise, sell, promote, or
10 26 offer to furnish a funeral director's services as an employee
10 27 or agent of a funeral establishment furnishing the funeral
10 28 services under chapter 156.

10 29 3. An application for a sales ~~permit~~ license shall be
10 30 filed on a form prescribed by the commissioner and be
10 31 accompanied by a ~~five dollar~~ filing fee in an amount set by
10 32 the commissioner by rule.

10 33 4. The application shall contain:

10 34 a. The name and address of the person.

10 35 b. The name and address of the person's employer and each
11 1 establishment on whose behalf the person will be advertising,
11 2 selling, promoting, or offering to furnish cemetery
11 3 merchandise, funeral merchandise, funeral services, or a
11 4 combination thereof.

11 5 c. The name and address of the provider who will provide
11 6 the cemetery merchandise, funeral merchandise, funeral
11 7 services, or a combination thereof if different from the
11 8 person's employer.

11 9 4. a. The commissioner shall request and obtain,
11 10 notwithstanding section 692.2, subsection 5, criminal history
11 11 data for any applicant for an initial or renewal license
11 12 issued pursuant to this chapter, any applicant for
11 13 reinstatement of a license issued pursuant to this chapter, or
11 14 any licensee who is being monitored as a result of a board
11 15 order or agreement resolving an administrative disciplinary
11 16 action, for the purpose of evaluating the applicant's or
11 17 licensee's eligibility for licensure or suitability for
11 18 continued practice as a sales agent. The board shall adopt
11 19 rules pursuant to chapter 17A to implement this section. The
11 20 commissioner shall inform the applicant or licensee of the
11 21 criminal history requirement and obtain a signed waiver from
11 22 the applicant or licensee prior to submitting a criminal
11 23 history data request.

11 24 b. A request for criminal history data shall be submitted
11 25 to the department of public safety, division of criminal
11 26 investigation, pursuant to section 692.2, subsection 1. The
11 27 commissioner may also require such applicants or licensees, to

11 28 provide a full set of fingerprints, in a form and manner
11 29 prescribed by the commission. Such fingerprints may be
11 30 submitted to the federal bureau of investigation through the
11 31 state criminal history repository for a national criminal
11 32 history check. The commissioner may authorize alternate
11 33 methods or sources for obtaining criminal history record
11 34 information. The commission may, in addition to any other
11 35 fees, charge and collect such amounts as may be incurred by
12 1 the commissioner, the department of public safety, or the
12 2 federal bureau of investigation in obtaining criminal history
12 3 information. Amounts collected shall be considered repayment
12 4 receipts as defined in section 8.2.

12 5 c. Criminal history information relating to an applicant
12 6 or licensee obtained by the commissioner pursuant to this
12 7 section is confidential. The commissioner may, however, use
12 8 such information in a license denial proceeding. In a
12 9 disciplinary proceeding, such information shall constitute
12 10 investigative information under section 272C.6, subsection 4,
12 11 and may be used only for purposes consistent with that
12 12 section.

12 13 5. The commissioner shall request and obtain a financial
12 14 history for any applicant for an initial or renewal license
12 15 issued pursuant to this chapter, any applicant for
12 16 reinstatement of a license issued pursuant to this chapter, or
12 17 any licensee who is being monitored as a result of a
12 18 commission order or agreement resolving an administrative
12 19 disciplinary action, for the purpose of evaluating the
12 20 applicant's or licensee's eligibility for licensure or
12 21 suitability for continued practice as a sales agent.
12 22 "Financial history" means the record of a person's current
12 23 loans, the date of a person's loans, the amount of the loans,
12 24 the person's payment record on the loans, current liens
12 25 against the person's property, and the person's most recent
12 26 financial statement setting forth the assets, liabilities, and
12 27 the net worth of the person.

12 28 ~~5- 6. An initial permit expires one year from the date~~
12 29 ~~the application is filed. The permit may be renewed for four~~
12 30 ~~license shall be renewed every two years by filing the form~~
12 31 ~~prescribed by the commissioner under subsection 3, accompanied~~
12 32 ~~by a twenty dollar filing fee in an amount set by the~~
12 33 ~~commissioner by rule.~~

12 34 7. Renewal of a license granted under this section shall
12 35 not be approved unless the applicant has satisfactorily
13 1 completed the continuing education requirements for the
13 2 license as prescribed by the commissioner.

13 3 ~~6- 8. A permit holder licensee shall inform the~~
13 4 ~~commissioner of changes in the information required to be~~
13 5 ~~provided by subsection 4 in the application within thirty days~~
13 6 ~~of the change.~~

13 7 ~~7- 9. A sales permit license is not assignable or~~
13 8 ~~transferable. An establishment selling all or part of its~~
13 9 ~~business to a purchaser shall cancel the establishment's sales~~
13 10 ~~permit. The purchaser shall apply for a new sales permit in~~
13 11 ~~the purchaser's name within thirty days of the sale.~~

13 12 ~~8- 10. If no denial order is in effect and no proceeding~~
13 13 ~~is pending under section ~~523A.503~~ 523A.502A, the application~~
13 14 ~~becomes effective at noon of the thirtieth day after a~~
13 15 ~~completed application or an amendment completing the~~
13 16 ~~application is filed, unless waived by the applicant. The~~
13 17 ~~commissioner may specify an earlier effective date. Automatic~~
13 18 ~~effectiveness under this subsection shall not be deemed~~
13 19 ~~approval of the application. If the commissioner does not~~
13 20 ~~grant the permit license, the commissioner shall notify the~~
13 21 ~~applicant in writing of the reasons for the denial.~~

13 22 ~~9- 11. The commissioner may by rule create or accept a~~
13 23 ~~multijurisdiction sales permit license. If the sales permit~~
13 24 ~~license is issued by another jurisdiction, the rules shall~~
13 25 ~~require the filing of an application or notice form and~~
13 26 ~~payment of the applicable filing fee of five dollars for each~~
13 27 ~~year. The application or notice form utilized and the~~
13 28 ~~effective dates and terms of the permit may vary from the~~
13 29 ~~provisions set forth in subsections 3 and 5 6.~~

13 30 Sec. 18. NEW SECTION. 523A.502A DENIAL, SUSPENSION,
13 31 REVOCATION, AND SURRENDER OF SALES LICENSES.

13 32 1. The commissioner may, pursuant to chapter 17A, deny any
13 33 sales license application, or immediately suspend, revoke, or
13 34 otherwise impose disciplinary action related to a sales
13 35 license issued under section 523A.502 for several reasons,
14 1 including but not limited to:

14 2 a. Committing a fraudulent act, engaging in a fraudulent
14 3 practice, or violating any provision of this chapter or any

14 4 implementing rule or order issued under this chapter.
14 5 b. Violating any other state or federal law applicable to
14 6 the conduct of the applicant's or licensee's business.
14 7 c. Insolvency or financial condition.
14 8 d. The licensee, for the purpose of avoiding the trust
14 9 requirement for funeral services, attributes amounts paid
14 10 under the purchase agreement to cemetery merchandise or
14 11 funeral merchandise that is delivered under section 523A.404
14 12 rather than to funeral services sold to the purchaser. The
14 13 sale of funeral services at a lower price when the sale is
14 14 made in conjunction with the sale of cemetery merchandise or
14 15 funeral merchandise to be delivered under section 523A.404
14 16 than the services are regularly and customarily sold for when
14 17 not sold in conjunction with cemetery merchandise or funeral
14 18 merchandise is evidence that the licensee is acting with the
14 19 purpose of avoiding the trust requirement for funeral services
14 20 under section 523A.201.

14 21 e. Engaging in a deceptive act or practice or deliberately
14 22 misrepresenting or omitting a material fact regarding the sale
14 23 of cemetery merchandise, funeral merchandise, funeral
14 24 services, or a combination thereof under this chapter.

14 25 f. Conviction of a criminal offense involving dishonesty
14 26 or a false statement.

14 27 g. Inability to provide the cemetery merchandise, funeral
14 28 merchandise, funeral services, or a combination thereof which
14 29 the applicant or licensee purports to sell.

14 30 h. The applicant or licensee sells the business without
14 31 filing a prior notice of sale with the commissioner. The
14 32 license shall be revoked thirty days following such sale.

14 33 i. Selling by a person who is not a sales agent.

14 34 2. The commissioner may, for good cause shown, suspend any
14 35 license for a period not exceeding thirty days, pending
15 1 investigation.

15 2 3. Except as provided in subsection 2, a license shall not
15 3 be revoked, suspended, or otherwise be the subject of
15 4 disciplinary action except after notice and hearing under
15 5 chapter 17A.

15 6 4. Any licensee may surrender a license by delivering to
15 7 the commissioner written notice that the licensee surrenders
15 8 the license, but the surrender shall not affect the licensee's
15 9 civil or criminal liability for acts committed before the
15 10 surrender.

15 11 5. Denial, revocation, suspension, or surrender of a sales
15 12 license does not impair or affect the obligation of any
15 13 preexisting lawful agreement between the licensee and any
15 14 person.

15 15 6. The commissioner may impose a civil penalty in an
15 16 amount not exceeding ten thousand dollars per violation
15 17 against any person violating section 523A.502 or this section.
15 18 Each day of a continuing violation constitutes a separate
15 19 offense.

15 20 Sec. 19. NEW SECTION. 523A.504 APPOINTMENT OF SALES
15 21 AGENTS.

15 22 1. A person shall not sell or offer to furnish cemetery
15 23 merchandise, funeral merchandise, funeral services, or a
15 24 combination thereof when performance or delivery may be more
15 25 than one hundred twenty days following initial payment on the
15 26 account except through a sales agent who holds a sales permit
15 27 issued pursuant to section 523A.502. If a person holding an
15 28 establishment permit appoints a sales agent to act on behalf
15 29 of the establishment, the person shall file a notice of such
15 30 appointment with the commissioner within thirty days of the
15 31 appointment, in a format approved by the commissioner, and
15 32 annually thereafter.

15 33 2. An establishment shall pay an annual fee of five
15 34 dollars for each sales agent appointed by the establishment,
15 35 which fee shall be submitted with the annual report.

16 1 Sec. 20. Section 523A.601, Code 2007, is amended by adding
16 2 the following new subsection:

16 3 NEW SUBSECTION. 6. a. A purchase agreement that is
16 4 funded by a trust shall include a conspicuous statement in
16 5 substantially the following language:

16 6 "There is potential risk under a prearranged funeral
16 7 agreement that the seller may not be able to deliver on the
16 8 arrangements contained in the agreement due to insufficient
16 9 funding. We will deposit (insert number) percent of your
16 10 payment(s) in trust at (name of financial institution),
16 11 (street address), (city), (state) (zip code). To protect
16 12 yourself, you should confirm that the deposit of these funds
16 13 has been made by contacting the financial institution
16 14 directly. If you are unable to confirm the deposit of these

16 15 funds in trust, you should report this fact to the Iowa
16 16 insurance division, by calling the insurance division at
16 17 (telephone number). Written reports should be mailed to the
16 18 Iowa insurance division at (street address), (city), Iowa (zip
16 19 code)."

16 20 b. A purchase agreement that is funded with an insurance
16 21 policy or an annuity shall include a conspicuous statement in
16 22 substantially the following language:

16 23 "There is potential risk under a prearranged funeral
16 24 agreement that the seller may not be able to deliver on the
16 25 arrangements contained in the agreement due to insufficient
16 26 funding. An (insurance policy or annuity) will be purchased
16 27 from (name of issuer of the policy or annuity), (street
16 28 address), (city), (state) (zip code). You should receive
16 29 confirmation of the purchase of an insurance policy or
16 30 certificate, or an annuity within sixty days of making
16 31 payment. Delivery of the actual insurance policy or
16 32 certificate or annuity shall also constitute confirmation. If
16 33 you do not receive confirmation that an insurance policy or
16 34 certificate or an annuity has been purchased or receive the
16 35 insurance policy or certificate or the annuity, you should
17 1 report this fact to the Iowa insurance division, by calling
17 2 the insurance division at (telephone number).

17 3 c. A purchase agreement that is funded with a surety bond
17 4 shall include a conspicuous statement in substantially the
17 5 following language:

17 6 "There is potential risk under a prearranged funeral
17 7 agreement that the seller may not be able to deliver on the
17 8 arrangements contained in the agreement due to insufficient
17 9 funding. Coverage under a surety bond, in the amount of
17 10 \$(amount) will be purchased from (name of issuer of surety
17 11 bond), (street address), (city), (state) (zip code) to fund
17 12 your purchase. If you pay pursuant to your purchase agreement
17 13 with a single payment, you should receive confirmation of the
17 14 purchase of a surety bond within sixty days of making the
17 15 payment. If you pay pursuant to your purchase agreement with
17 16 multiple, periodic payments, you should receive confirmation
17 17 of the purchase of a surety bond within sixty days of making
17 18 the first payment and within sixty days of making the last
17 19 payment pursuant to the agreement. If you do not receive
17 20 confirmation of coverage under a surety bond within sixty days
17 21 of making the first payment and within sixty days of making
17 22 the last payment, you should report this fact to the Iowa
17 23 insurance division, by calling the insurance division at
17 24 (telephone number). Written reports should be mailed to the
17 25 Iowa insurance division at (street address), (city), Iowa (zip
17 26 code)."

17 27 d. A purchase agreement that is funded by the purchase of
17 28 merchandise shall include a conspicuous statement in
17 29 substantially the following language:

17 30 "There is potential risk under a prearranged funeral
17 31 agreement that the seller may not be able to deliver on the
17 32 arrangements contained in the agreement due to insufficient
17 33 funding or because the merchandise was not purchased. By
17 34 state law, only two types of merchandise may be purchased and
17 35 warehoused in lieu of trust arrangements: outer burial
18 1 containers made of either polystyrene or polypropylene, and
18 2 grave markers, memorials, and monuments. We will purchase
18 3 (description of merchandise to be purchased) and it will be
18 4 warehoused in lieu of trust arrangements at (company name),
18 5 (street address), (city), (state) (zip code). If you pay
18 6 pursuant to your purchase agreement with a single payment, you
18 7 should receive a copy of the warehouse receipt evidencing your
18 8 title to that merchandise within sixty days of making the
18 9 payment. If you pay pursuant to your purchase agreement with
18 10 multiple, periodic payments, you should receive a copy of the
18 11 warehouse receipt evidencing your title to that merchandise
18 12 within sixty days of making the last payment pursuant to the
18 13 agreement. If you do not receive the warehouse receipt
18 14 evidencing your title to that merchandise within sixty days of
18 15 making your single payment or your last payment pursuant to
18 16 the purchase agreement, you should report this fact to the
18 17 Iowa insurance division, by calling the insurance division at
18 18 (telephone number). Written reports should be mailed to the
18 19 Iowa insurance division at (street address), (city), Iowa (zip
18 20 code)."

18 21 Sec. 21. NEW SECTION. 523A.603 SECURITY AND NOTICE
18 22 REQUIREMENTS.

18 23 1. If a purchase agreement is funded with an insurance
18 24 policy or an annuity, the purchaser shall receive a notice
18 25 thereof from the insurance company within sixty days of making

18 26 payment. The notice shall include the name and address of the
18 27 insurance company, the policy number of the insurance policy
18 28 that secures the agreement, the name of the insured under the
18 29 insurance policy or annuity, and the amount of the accumulated
18 30 death benefit. Delivery of the insurance policy or
18 31 certificate or annuity shall satisfy this notice requirement.

18 32 2. If a purchase agreement is funded by the purchase of
18 33 merchandise, the purchaser shall receive a copy of a warehouse
18 34 receipt of ownership evidencing title in the name of the
18 35 purchaser or the beneficiary. If the purchase agreement is
19 1 paid with a single payment, the purchaser shall receive the
19 2 warehouse receipt evidencing the purchaser's title to
19 3 merchandise within sixty days of making the payment. If the
19 4 purchase agreement is being paid with multiple, periodic
19 5 payments, the purchaser shall receive the warehouse receipt
19 6 evidencing the purchaser's title to merchandise within sixty
19 7 days of making the last payment.

19 8 3. If a purchase agreement is funded by a surety bond, the
19 9 purchaser shall receive a notice from the surety company that
19 10 evidences coverage under the bond, the name of the purchaser
19 11 or beneficiary, and the amount of coverage. If the purchase
19 12 agreement is paid with a single payment, the purchaser shall
19 13 receive notice of the surety bond within sixty days of making
19 14 the payment. If the purchase agreement is being paid with
19 15 multiple, periodic payments, the purchaser shall receive
19 16 notice of the surety bond within sixty days of making the last
19 17 payment. Compliance with this notice requirement does not
19 18 require a seller to purchase individual surety bonds for each
19 19 purchaser and beneficiary. A seller may file a single bond
19 20 with the commissioner.

19 21 Sec. 22. Section 523A.801, subsection 1, Code 2007, is
19 22 amended to read as follows:

19 23 1. This chapter shall be administered by the commissioner.
19 24 ~~The deputy administrator appointed pursuant to section 502.601~~
~~19 25 shall be the principal operations officer responsible to the~~
~~19 26 commissioner for the routine administration of this chapter~~
~~19 27 and management of the administrative staff. In the absence of~~
~~19 28 the commissioner, whether because of vacancy in the office due~~
~~19 29 to absence, physical disability, or other cause, the deputy~~
~~19 30 administrator shall, for the time being, have and exercise the~~
~~19 31 authority conferred upon the commissioner. The commissioner~~
~~19 32 or the commissioner's designee may by order from time to time~~
~~19 33 delegate to the deputy administrator any or all of the~~
~~19 34 functions assigned to the commissioner in this chapter. The~~
~~19 35 deputy administrator shall employ officers, attorneys,~~
20 1 accountants, and other employees as needed for administering
20 2 this chapter.

20 3 Sec. 23. Section 523A.811, subsection 1, Code 2007, is
20 4 amended by adding the following new paragraph:

20 5 NEW PARAGRAPH. f. A receivership has been established for
20 6 a cemetery subject to chapter 523I that is owned or operated
20 7 by a seller who is subject to this chapter.

20 8 Sec. 24. Section 523A.811, Code 2007, is amended by adding
20 9 the following new subsection:

20 10 NEW SUBSECTION. 3. If a seller who is subject to this
20 11 chapter owns or operates a cemetery subject to chapter 523I,
20 12 for which a receivership has been established, the
20 13 receivership provisions of section 523I.212 shall apply to any
20 14 receivership established under this section.

20 15 Sec. 25. Section 523A.812, Code 2007, is amended to read
20 16 as follows:

20 17 523A.812 INSURANCE DIVISION REGULATORY FUND.

20 18 The insurance division may authorize the creation of a
20 19 special revenue fund in the state treasury, to be known as the
20 20 insurance division regulatory fund. The commissioner shall
20 21 allocate annually from the fees paid pursuant to section
20 22 523A.204, two dollars for each purchase agreement reported on
20 23 an establishment permit holder's annual report for deposit to
20 24 the regulatory fund. The remainder of the fees collected
20 25 pursuant to section 523A.204 shall be deposited into the
20 26 general fund of the state. The commissioner shall also
20 27 allocate annually the audit examination fees paid pursuant to
20 28 section 523A.814 and any examination expense reimbursement for
20 29 deposit to the regulatory fund. The moneys in the regulatory
20 30 fund shall be retained in the fund. The moneys are
20 31 appropriated and, subject to authorization by the
20 32 commissioner, may be used to pay auditors, audit examiners,
~~20 33 examination~~ expenses, investigative expenses, the expenses of
20 34 mediation ordered by the commissioner, consumer education
20 35 expenses, the expenses of a toll-free telephone line to
21 1 receive consumer complaints, and the expenses of receiverships

21 2 established under section 523A.811. An annual allocation to
21 3 the regulatory fund shall not be imposed if the current
21 4 balance of the fund exceeds ~~two~~ five hundred thousand dollars.
21 5 Sec. 26. Section 523A.814, Code 2007, is amended to read
21 6 as follows:
21 7 523A.814 ~~AUDIT EXAMINATION FEE.~~
21 8 In addition to the filing fee paid pursuant to section
21 9 523A.204, subsection 5 2, an establishment filing an annual
21 10 report shall pay an ~~audit examination~~ fee in the amount of
21 11 five dollars for each purchase agreement subject to a filing
21 12 fee that is sold between July 1, 2005, and December 31, 2007.
~~21 13 and in the amount of ten dollars for each purchase agreement~~
~~21 14 subject to a filing fee that is sold after December 31, 2007.~~
21 15 Sec. 27. Section 523I.102, subsections 3 and 8, Code 2007,
21 16 are amended to read as follows:
21 17 3. "Capital gains" means appreciation in the value of
21 18 trust assets for which a market value may be determined with
21 19 reasonable certainty after deduction of investment losses,
21 20 taxes, expenses incurred in the sale of trust assets, any
21 21 costs of the operation of the trust, ~~examination expenses,~~ and
21 22 any ~~annual~~ audit ~~fees~~ expenses.
21 23 8. "Commissioner" means the commissioner of insurance or
21 24 the ~~deputy administrator authorized in section 523A.801 to the~~
~~21 25 extent the commissioner delegates functions to the deputy~~
~~21 26 administrator commissioner's designee authorized in section~~
~~21 27 523A.801.~~
21 28 Sec. 28. Section 523I.102, subsection 17, unnumbered
21 29 paragraph 1, Code 2007, is amended to read as follows:
21 30 "Income" means the return in money or property derived from
21 31 the use of trust principal after deduction of investment
21 32 losses, taxes, and expenses incurred in the sale of trust
21 33 assets, any cost of the operation of the trust, examination
~~21 34 expenses or fees,~~ and any ~~annual~~ audit ~~fees~~ expenses.
21 35 "Income" includes but is not limited to:
22 1 Sec. 29. Section 523I.201, subsection 1, Code 2007, is
22 2 amended to read as follows:
22 3 1. This chapter shall be administered by the commissioner.
22 4 ~~The deputy administrator appointed pursuant to section 502.601~~
~~22 5 shall be the principal operations officer responsible to the~~
~~22 6 commissioner for the routine administration of this chapter~~
~~22 7 and management of the administrative staff. In the absence of~~
~~22 8 the commissioner, whether because of vacancy in the office due~~
~~22 9 to absence, physical disability, or other cause, the deputy~~
~~22 10 administrator shall, for the time being, have and exercise the~~
~~22 11 authority conferred upon the commissioner. The commissioner~~
~~22 12 may by order from time to time delegate to the deputy~~
~~22 13 administrator any or all of the functions assigned to the~~
~~22 14 commissioner in this chapter. The deputy administrator or the~~
~~22 15 commissioner's designee shall employ officers, attorneys,~~
22 16 accountants, and other employees as needed for administering
22 17 this chapter.
22 18 Sec. 30. Section 523I.212, subsection 1, Code 2007, is
22 19 amended by adding the following new paragraph:
22 20 NEW PARAGRAPH. d. A receivership has been established for
22 21 a seller subject to chapter 523A who owns or operates a
22 22 cemetery that is subject to this chapter.
22 23 Sec. 31. Section 523I.212, subsection 2, Code 2007, is
22 24 amended to read as follows:
22 25 2. The commissioner or attorney general may apply to the
22 26 district court in any county of the state for the
22 27 establishment of a receivership. Upon proof that any of the
22 28 conditions described in this section have occurred, the court
22 29 may grant a receivership. ~~The commissioner may request that~~
~~22 30 the insurance division be named as a receiver or that the~~
~~22 31 court appoint a third party as a receiver. If the division is~~
~~22 32 appointed as a receiver, the division shall not be subject to~~
~~22 33 the requirements concerning an oath and surety bond contained~~
~~22 34 in section 680.3.~~
22 35 Sec. 32. Section 523I.212, Code 2007, is amended by adding
23 1 the following new subsections:
23 2 NEW SUBSECTION. 3. In addition to the powers granted to
23 3 receivers under chapter 680, a receiver appointed under this
23 4 section shall be granted all powers necessary to locate and to
23 5 temporarily preserve and protect perpetual care trust funds,
23 6 consumer and business assets, interment records, records of
23 7 consumer purchases of interment rights, and records of
23 8 consumer purchases of funeral services and funeral or cemetery
23 9 merchandise as defined in chapter 523A. The receiver shall
23 10 also be granted such powers as are necessary in the course of
23 11 the receivership to temporarily preserve and protect a
23 12 cemetery or burial site and to temporarily restore or sustain

23 13 cemetery operations, including interments, as operating funds
23 14 or trust funds become available.

23 15 NEW SUBSECTION. 4. The commissioner may petition the
23 16 court to terminate a receivership at any time and to enter
23 17 such orders as are necessary to transfer the duty to preserve
23 18 and protect the physical integrity of the cemetery or burial
23 19 site, the interment records, and other records documenting
23 20 consumer purchases of interment rights to the applicable
23 21 governmental subdivision, as provided in section 523I.316,
23 22 subsection 3. The court shall grant the petition if following
23 23 the first one hundred twenty days of the receivership such
23 24 duty to preserve and protect cannot be reasonably assumed by a
23 25 private entity, association, or by other means.

23 26 Sec. 33. Section 523I.213, Code 2007, is amended to read
23 27 as follows:

23 28 523I.213 INSURANCE DIVISION'S ENFORCEMENT FUND.

23 29 A special revenue fund in the state treasury, to be known
23 30 as the insurance division's enforcement fund, is created under
23 31 the authority of the commissioner. The commissioner shall
23 32 allocate annually from the ~~audit examination~~ fees paid
23 33 pursuant to section 523I.808, an amount not exceeding fifty
23 34 thousand dollars, for deposit to the insurance division's
23 35 enforcement fund. The moneys in the enforcement fund shall be
24 1 retained in the fund. The moneys are appropriated and,
24 2 subject to authorization by the commissioner, shall be used to
24 3 pay ~~auditors, audit examiners, examination~~ expenses,
24 4 investigative expenses, the expenses of consumer education,
24 5 compliance, and education programs for filers and other
24 6 regulated persons, and educational or compliance program
24 7 materials, the expenses of a toll-free telephone line for
24 8 consumer complaints, and the expenses of receiverships of
24 9 perpetual care cemeteries established under section 523I.212.

24 10 Sec. 34. NEW SECTION. 523I.213A EXAMINATIONS ==
24 11 AUTHORITY AND SCOPE.

24 12 1. The commissioner or the commissioner's designee may
24 13 conduct an examination under this chapter of any cemetery as
24 14 often as the commissioner deems appropriate. If a cemetery
24 15 has a trust arrangement, the commissioner shall conduct an
24 16 examination not less than once every five years.

24 17 2. A cemetery shall reimburse the division for the expense
24 18 of conducting the examination unless the commissioner waives
24 19 this requirement. The expense of an examination involving
24 20 multiple cemeteries or other persons shall be prorated among
24 21 them upon any reasonable basis as determined by the
24 22 commissioner.

24 23 3. For purposes of completing an examination pursuant to
24 24 this chapter, the commissioner may examine or investigate any
24 25 person, or the business of any person, if the examination or
24 26 investigation is, in the sole discretion of the commissioner,
24 27 necessary or material to the examination of the cemetery.

24 28 4. Upon determining that an examination should be
24 29 conducted, the commissioner or the commissioner's designee may
24 30 appoint one or more examiners to perform the examination and
24 31 instruct them as to the scope of the examination.

24 32 5. A cemetery or person from whom information is sought,
24 33 and its officers, directors, and agents shall provide to the
24 34 examiners appointed under subsection 4, timely, convenient,
24 35 and free access at their offices, at all reasonable hours, to
25 1 all books, records, accounts, papers, documents, and all
25 2 electronic or other recordings related to the property,
25 3 assets, business, and affairs of the cemetery being examined
25 4 and shall facilitate the examination as much as possible. If
25 5 a cemetery, by its officers, directors, employees, or agents,
25 6 refuses to submit to an examination as provided in this
25 7 chapter, the commissioner shall immediately report the refusal
25 8 to the attorney general, who shall then immediately apply to
25 9 district court for the appointment of a receiver to administer
25 10 the final affairs of the cemetery.

25 11 6. This section shall not be construed to limit the
25 12 commissioner's authority to terminate or suspend any
25 13 examination in order to pursue other legal or regulatory
25 14 actions pursuant to this chapter. Findings of fact and
25 15 conclusions made pursuant to an examination are deemed to be
25 16 prima facie evidence in any legal or regulatory action.

25 17 Sec. 35. NEW SECTION. 523I.213B VENUE.

25 18 All actions relating to the enforcement of this chapter
25 19 shall be governed by the laws of the state of Iowa. Venue of
25 20 any action relating to enforcement of this chapter may be in a
25 21 court of competent jurisdiction in Polk county, at the
25 22 discretion of the commissioner.

25 23 Sec. 36. Section 523I.305, subsection 3, Code 2007, is

25 24 amended to read as follows:

25 25 3. SPECIFICATIONS. Upon request, a cemetery shall provide
25 26 reasonable written specifications and instructions governing
25 27 installation of memorials, which shall apply to all
25 28 installations whether performed by the cemetery or another
25 29 person. The written specifications shall include provisions
25 30 governing hours of installation or any other relevant
25 31 administrative requirements of the cemetery. A copy of these
25 32 specifications and instructions shall be provided upon
25 33 request, without charge, to the owner of the interment space,
25 34 next of kin, or a personal representative or agent of the
25 35 owner, including the person installing the memorial. The
26 1 person installing the memorial shall comply with the
26 2 cemetery's written installation specifications and
26 3 instructions. In order to verify that a memorial is installed
26 4 on the proper interment space in accordance with cemetery
26 5 rules and regulations, the cemetery shall mark the place on
26 6 the interment space where the memorial is to be installed and
26 7 shall inspect the installation when completed. This
26 8 subsection shall not be construed to require that a cemetery
26 9 lay out or engineer an interment space for the installation of
26 10 a memorial. A cemetery shall not adopt or enforce any rule
26 11 prohibiting the installation of a memorial by a memorial
26 12 dealer or independent third party, unless the rule is ~~adopted~~
26 13 applicable to all memorials from whatever source obtained and
26 14 enforced uniformly for all memorials installed in the
26 15 cemetery.

26 16 Sec. 37. NEW SECTION. 523I.314A STANDARDS FOR INTERMENT
26 17 SPACES.

26 18 1. A standard interment space for full body interment
26 19 developed on or after July 1, 2007, shall measure at least
26 20 forty inches in width and ninety-six inches in length.

26 21 2. Prior to the sale of interment rights in an undeveloped
26 22 area of a cemetery, internal reference markers shall be
26 23 installed and maintained no more than one hundred feet apart.
26 24 The internal reference markers shall be established with
26 25 reference to survey markers that are no more than two hundred
26 26 feet apart, have been set by a surveyor and mapper, and have
26 27 been documented in a land survey. Both the map and the land
26 28 survey shall be maintained by the cemetery and made available
26 29 upon request to the commissioner and to members of the public.

26 30 Sec. 38. Section 523I.508, subsection 1, Code 2007, is
26 31 amended to read as follows:

26 32 1. POLITICAL SUBDIVISIONS AS TRUSTEES. Counties, cities,
26 33 irrespective of their form of government, boards of trustees
26 34 of cities to whom the management of municipal cemeteries has
26 35 been transferred by ordinance, and civil townships wholly
27 1 outside of any city, are trustees in perpetuity, and are
27 2 required to accept, receive, and expend all moneys and
27 3 property donated or left to them by bequest for perpetual
27 4 care, and that portion of interment space sales or permanent
27 5 charges made against interment spaces which has been set aside
27 6 in a perpetual care fund for which there is no other acting
27 7 trustee, shall be used in caring for the property of the donor
27 8 or lot owner who by purchase or otherwise has provided for the
27 9 perpetual care of an interment space in any cemetery, or in
27 10 accordance with the terms of the donation, bequest, or
27 11 agreement for sale and purchase of an interment space, and the
27 12 money or property thus received shall be used for no other
27 13 purpose. However, upon a finding by the commissioner that a
27 14 township is unable to assume perpetual care of a cemetery
27 15 located in the township as required under this subsection, the
27 16 state shall assume perpetual care of the cemetery.

27 17 Sec. 39. Section 523I.808, Code 2007, is amended to read
27 18 as follows:

27 19 523I.808 AUDIT EXAMINATION FEE.

27 20 An audit examination fee shall be submitted with the
27 21 cemetery's annual report in an amount equal to five dollars
27 22 for each certificate of interment rights issued during the
27 23 fiscal year covered by the report. The cemetery may charge
27 24 the audit examination fee directly to the purchaser of the
27 25 interment rights.

27 26 Sec. 40. Section 523I.810, subsection 9, Code 2007, is
27 27 amended to read as follows:

27 28 9. A cemetery may, by resolution adopted by a vote of at
27 29 least two-thirds of the members of its board at any authorized
27 30 meeting of the board, authorize the withdrawal and use of not
27 31 more than twenty percent of the principal of the care fund to
27 32 acquire additional land for cemetery purposes, to repair a
27 33 mausoleum or other building or structure intended for cemetery
27 34 purposes, ~~or~~ to build, improve, or repair roads and walkways

27 35 in the cemetery, or to purchase recordkeeping software used to
28 1 maintain ownership records or interment records. The
28 2 resolution shall establish a reasonable repayment schedule,
28 3 not to exceed five years, and provide for interest in an
28 4 amount comparable to the care fund's current rate of return on
28 5 its investments. However, the care fund shall not be
28 6 diminished below an amount equal to the greater of twenty-five
28 7 thousand dollars or five thousand dollars per acre of land in
28 8 the cemetery. The resolution, and either a bond or proof of
28 9 insurance to guarantee replenishment of the care fund, shall
28 10 be filed with the commissioner thirty days prior to the
28 11 withdrawal of funds.

28 12 Sec. 41. Section 523I.813, subsection 1, Code 2007, is
28 13 amended by striking the subsection and inserting in lieu
28 14 thereof the following:

28 15 1. A perpetual care cemetery shall file an annual report
28 16 at the end of each fiscal year of the cemetery.

28 17 Sec. 42. Section 523I.813, Code 2007, is amended by adding
28 18 the following new subsection:

28 19 NEW SUBSECTION. 3. The commissioner shall levy an
28 20 administrative penalty in the amount of five hundred dollars
28 21 against a cemetery that fails to file the annual report when
28 22 due, payable to the state for deposit in the general fund.

28 23 EXPLANATION

28 24 This bill makes changes relating to cemeteries and related
28 25 services.

28 26 PREARRANGED CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL
28 27 SERVICES. Code section 523A.102, which contains the chapter's
28 28 definitions, is amended to provide that for the purposes of
28 29 Code chapter 523A "commissioner" means the commissioner of
28 30 insurance or the commissioner's designee, and "establishment"
28 31 includes each business entity that deals with cemetery and
28 32 funeral merchandise and funeral services. A conforming
28 33 amendment to reflect these changes is made in Code section
28 34 523A.801.

28 35 Code section 523A.102 is also amended by adding a
29 1 definition of "sales agent" that means a person, including an
29 2 employee, who is authorized by an establishment or seller to
29 3 sell cemetery merchandise, funeral merchandise, funeral
29 4 services, or combination thereof, on behalf of the
29 5 establishment or seller.

29 6 Code section 523A.201 is amended to provide that if a
29 7 purchase agreement is financed with or sold to a financial
29 8 institution, the agreement shall be considered paid in full
29 9 and the trust requirements satisfied within 15 days after the
29 10 seller receives funds from the financial institution.

29 11 Code section 523A.201, subsection 5, is rewritten to
29 12 require a seller of cemetery and funeral merchandise and
29 13 services to have a minimum fidelity bond or similar insurance
29 14 of \$50,000 or more if required by the commissioner and to
29 15 continue the bond or insurance for at least one year after an
29 16 establishment or seller changes or transfers ownership.

29 17 Code section 523A.201, subsection 8, is amended to require
29 18 that all interest or income earned on amounts deposited in
29 19 trust are to remain in trust.

29 20 Code section 523A.201, subsection 10, is amended to require
29 21 a seller who ceases business to notify the commissioner at
29 22 least 30 days prior to ceasing business and to repay all trust
29 23 funds, including accrued interest or income within 30 days of
29 24 such cessation or within a longer period of time, if approved
29 25 by the commissioner.

29 26 Code section 523A.202, subsection 2, is amended to require
29 27 that payments for cemetery and funeral merchandise, and
29 28 funeral services be deposited in a burial account in the
29 29 purchaser's name that uses the purchaser's tax identification
29 30 number.

29 31 Code section 523A.202, subsection 4, is amended to require
29 32 that the commissioner be notified within 30 days of the
29 33 movement of trust funds between financial institutions.

29 34 Code section 523A.203 is amended by adding a requirement
29 35 that trust fund assets be allocated by including a diversified
30 1 portfolio and making investment and management decisions in
30 2 accordance with the provisions of Code section 633A.4302 of
30 3 the Iowa trust code unless proceeding under Code section
30 4 523A.403 with a purchase agreement funded by certificates of
30 5 deposit.

30 6 Code section 523A.204, containing annual reporting
30 7 requirements for establishments, is amended to delete specific
30 8 requirements for information to be included in the report, to
30 9 require the commissioner to levy an administrative penalty in
30 10 the amount of \$500 against an establishment that fails to file

30 11 the report when due, and to prohibit an establishment that
30 12 fails to timely file an annual report from soliciting or
30 13 executing purchase agreements until the report is filed and
30 14 any administrative penalty has been paid. A filing fee of \$10
30 15 for filing an annual report remains the same.

30 16 Code section 523A.206 is rewritten to provide that the
30 17 commissioner shall conduct an examination rather than an audit
30 18 of an establishment as often as necessary but not less than
30 19 once every three years. The commissioner may also require an
30 20 audit of an establishment, seller, or other person by a
30 21 certified public accountant to verify compliance with chapter
30 22 523A, including rules and orders issued pursuant to the
30 23 chapter. The cost of the examination shall be reimbursed to
30 24 the division by the establishment or seller unless this
30 25 requirement is waived. The commissioner is authorized to
30 26 examine any person or business necessary or material to the
30 27 examination of an establishment and to appoint examiners to
30 28 perform the examination. The establishment and its officers,
30 29 directors, employees, and agents are required to facilitate
30 30 the examination, and the refusal to do so constitutes grounds
30 31 for suspension, revocation, or nonrenewal of the
30 32 establishment's or seller's permit to engage in business
30 33 subject to Code chapter 523A and shall result in application
30 34 to the district court for appointment of a receiver to
30 35 administer the establishment's or seller's affairs.

31 1 Information obtained in an examination is not public except
31 2 under specified circumstances. Conforming amendments to
31 3 reflect the change in terminology from "audit" to
31 4 "examination" are made in Code sections 523A.404, subsection
31 5 1, 523A.812, and 523A.814.

31 6 New Code section 523A.207 provides that a purchase
31 7 agreement shall not be sold or transferred, as part of the
31 8 sale of a business or the assets of a business, until an audit
31 9 has been performed by a certified public accountant and filed
31 10 with the commissioner that expresses the auditor's opinion of
31 11 the adequacy of the funding related to the purchase agreements
31 12 to be sold or transferred.

31 13 Code section 523A.401 is amended to provide that
31 14 requirements for insurance policies used to fund purchase
31 15 agreements pertain to both establishments and sellers.

31 16 Code section 523A.501 is amended to remove the requirement
31 17 that each establishment have a permit, to remove specific
31 18 requirements for information on applications for establishment
31 19 permits, and to allow such permits to remain valid until
31 20 denied, suspended, revoked, or surrendered.

31 21 Code section 523A.502 is amended to require that a person
31 22 who sells cemetery and funeral merchandise and funeral
31 23 services must obtain a sales agent license for a fee set by
31 24 the commissioner of insurance by rule. An applicant for such
31 25 a license is required to undergo a criminal history and
31 26 financial history background check. The license cannot be
31 27 renewed unless the licensee has successfully completed
31 28 continuing education requirements prescribed by the
31 29 commissioner.

31 30 New Code section 523A.502A provides conditions and
31 31 procedures for denial, suspension, revocation, and surrender
31 32 of such sales licenses. The section allows the commissioner
31 33 to impose a civil penalty in an amount not exceeding \$10,000
31 34 per violation of new Code section 523A.502 or 523A.502A.

31 35 New Code section 523A.504 requires prearranged cemetery and
32 1 funeral merchandise and funeral services to be sold only
32 2 through a sales agent who holds a permit issued pursuant to
32 3 Code section 523A.502, requires holders of establishment
32 4 permits to appoint such sales agents to act on their behalf,
32 5 and requires notice of such appointment to the commissioner
32 6 within 30 days along with payment of a \$5 annual fee for each
32 7 sales agent appointed.

32 8 Code section 523A.601 is amended to provide that purchase
32 9 agreements that are funded by trust, insurance policies or
32 10 annuities, surety bonds, or the purchase of merchandise must
32 11 include a conspicuous statement informing the purchaser of the
32 12 right to have notice of the funding arrangements within
32 13 specified times and that the purchaser should contact the
32 14 insurance division if such notice does not occur.

32 15 New Code section 523A.603 contains the security and notice
32 16 requirements that purchasers are required to be notified of in
32 17 Code section 523A.601.

32 18 Code section 523A.801 is amended to provide that Code
32 19 chapter 523A shall be administered by the commissioner or the
32 20 commissioner's designee.

32 21 Code section 523A.811 is amended to provide that if a

32 22 receivership has been established for a cemetery subject to
32 23 Code chapter 523I that is owned or operated by a seller who is
32 24 subject to Code chapter 523A, a receivership shall be
32 25 established for the seller under this section pursuant to the
32 26 provisions of Code section 523I.212.
32 27 Code section 523A.812 is amended to provide that an annual
32 28 allocation of examination fees shall not be imposed if the
32 29 current balance of the fund exceeds \$500,000 instead of
32 30 \$200,000.
32 31 Code section 523A.814 is amended to raise the filing fee
32 32 for purchase agreements filed from \$5 to \$10 after December
32 33 31, 2007.
32 34 CEMETERY REGULATION. Code section 523I.102, which contains
32 35 the chapter's definitions, is amended to include examination
33 1 expenses in the calculation of capital gains and income. The
33 2 Code section is also amended to provide that for purposes of
33 3 Code chapter 523I "commissioner" means the commissioner of
33 4 insurance or the commissioner's designee. A conforming
33 5 amendment to reflect this change is made in Code section
33 6 523I.201, subsection 1.
33 7 Code section 523I.212, subsection 1, is amended to require
33 8 the commissioner to notify the attorney general of the need to
33 9 establish a receivership for a cemetery if a receivership has
33 10 been established for a seller subject to Code chapter 523A who
33 11 owns or operates a cemetery subject to this chapter.
33 12 Code section 523I.212, subsection 2, is amended to allow
33 13 the commissioner to request that either the division or a
33 14 third party be appointed as the receiver when a receivership
33 15 is established for a cemetery and to provide that the
33 16 provisions of Code section 680.3 requiring an oath and bond do
33 17 not apply when the division is appointed as the receiver.
33 18 Code section 523I.212 is also amended to grant additional
33 19 powers to the receiver of a cemetery to administer the
33 20 cemetery's affairs and to allow the commissioner to petition
33 21 the court to terminate the receivership and transfer the duty
33 22 to administer the cemetery to a governmental subdivision under
33 23 certain circumstances.
33 24 New Code section 523I.213A concerns the authority of the
33 25 commissioner to conduct examinations of cemeteries and the
33 26 scope of such examinations and requires the examination of
33 27 cemeteries with trust arrangements not less than once every
33 28 five years. Conforming amendments reflecting the change in
33 29 terminology from "audit" to "examination" are made in Code
33 30 sections 523I.213 and 523I.808.
33 31 New Code section 523I.213B provides that actions for
33 32 enforcement of Code chapter 523I shall be governed by Iowa law
33 33 and that the venue of any action under the Code chapter may be
33 34 in a court of competent jurisdiction in Polk county, at the
33 35 discretion of the commissioner.
34 1 Code section 523I.305 is amended to require cemeteries to
34 2 mark interment spaces and inspect installations of memorials
34 3 to ensure that memorials are installed in the proper place in
34 4 accordance with cemetery rules and regulations. The section
34 5 is also amended to prohibit a cemetery from adopting or
34 6 enforcing any rule prohibiting the installation of a memorial
34 7 by a memorial dealer or third party unless the rule is
34 8 applicable to all memorials from whatever source obtained.
34 9 New Code section 523I.314A establishes standards for the
34 10 size of full body interment spaces and requirements for
34 11 marking such spaces and maintaining maps and land surveys of
34 12 the cemetery.
34 13 Code section 523I.508 is amended to provide that if
34 14 perpetual care of a cemetery is transferred to a township that
34 15 is unable to assume that care, as determined by the
34 16 commissioner, the state shall instead assume perpetual care of
34 17 the cemetery.
34 18 Code section 523I.810, subsection 9, is amended to allow
34 19 cemetery care funds to be used to purchase recordkeeping
34 20 software to maintain ownership or interment records.
34 21 Code section 523I.813 is amended by removing specific
34 22 requirements for information to be provided on annual reports
34 23 by perpetual care cemeteries.
34 24 Code section 523I.813 is also amended to require the
34 25 commissioner to levy an administrative penalty of \$500 against
34 26 a perpetual care cemetery that fails to timely file its annual
34 27 report.
34 28 LSB 1191SV 82
34 29 av:sc/gg/14.1